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June 24, 2019

VIA HAND DELIVERY

City of Phoenix
c/o Phoenix City Clerk
200 W. Washington Street, 15th Floor
Phoenix, Arizona 85003

Mayor Kate Gallego
Phoenix City Hall
200 West Washington Street
Phoenix, Arizona 85003

Jeri Williams
Chief of Police
City of Phoenix Police Department
620 West Washington Street
Phoenix, Arizona 85003

RE:	<u>Notice of Claim Pursuant to A.R.S. § 12-821.01</u>
Claimant:	Erica Reynolds
Date of Incident:	December 26, 2018
Causes of Action:	Sexual assault and battery Wrongful Arrest False Imprisonment Gross Negligence Intentional infliction of emotional distress Punitive Damages
Demand for Settlement:	\$12,500,000.00

Dear Mayor Gallego, Chief Williams, and City Councilmembers,

When a police officer uses physical force in excess of his or her legal authority, it is a criminal assault.

When a police officer uses deadly force in excess of his or her legal authority, it is criminal homicide.

So what is it when a police officer, in excess of their legal authority, conducts a body cavity search in which the officer inserts multiple fingers into a woman's anus and vagina against her will?

This law firm represents Erica Reynolds. We are writing today to address an incident with which by now you should all be very familiar – one in which a team of Phoenix Police officers treated a South Phoenix woman in a manner that is indisputably unconstitutional, inarguably unlawful, and wholly unacceptable in any country that has a fundamental respect for human decency and sovereignty over one's own body.

OVERVIEW

On the morning after Christmas, December 26, 2018, officers from Phoenix PD's South Mountain Precinct were surveilling a local resident named Charles Riggins, who they suspected was running a narcotic drug ring. Intercepted phone calls revealed that Mr. Riggins would be meeting with Erica Reynolds that morning. Police surveilled that meeting but did not see any evidence of a crime being committed. Nonetheless, after the meeting concluded, they followed Erica in her vehicle and used a pretextual traffic stop to pull her over.

After Erica pulled over, the officers began questioning her about the odor of marijuana in her vehicle (presumably a cover story to protect the integrity of their ongoing investigation into Mr. Riggins). They required her to exit her vehicle and at least one officer proceeded to search the car without her consent. The officer found nothing. Then, a female officer patted Erica down. She too found nothing. Frustrated and visibly unsatisfied, the officers brought a drug-sniffing canine unit to the scene to search Erica's vehicle. The dogs were no more successful than the officers were, and they did not find any evidence of a crime.

At this point, with Erica demonstrably not in possession of anything illegal, the Phoenix PD officers made a choice. They did not end the search. They did not secure a search warrant. They did not release Erica. Instead, they handcuffed Erica, put her in the back of their car, and drove her to the South Mountain substation.

Once they arrived, officers brought Erica into what appeared to be an interrogation room and instructed her to remove her clothing. When she protested, the instruction was repeated multiple times, each with increasing sternness. Eventually, Erica realized it wasn't a request – it was an order.

Erica was afraid of what was happening. But she was even more afraid of what would happen if she refused.

She reluctantly removed her clothing, until she was left naked (except for a pair of socks), and then, on instructions from the officers, she bent over. As a female officer donned a pair of rubber gloves, Erica began to cry. As the officer inserted multiple unlubricated fingers into Erica's anus, probing her rectum, the tears flowed. And as the officer aggressively poked and prodded a hemorrhoid, Erica yelled in pain.

Through tears, Erica begged the officer to stop. And eventually, after finding nothing, the officer stopped searching Erica's rectum and removed her fingers from the inside of Erica's body.

Erica took a deep breath, collecting herself and feeling grateful that it was finally over.

But it wasn't.

Because then, without changing gloves, the officer proceeded to insert multiple fingers into Erica's vagina to probe her vaginal cavity.

No evidence of any crime was ever discovered on or within Erica's body that day. And only after this humiliating display of state violence, Erica was finally allowed to leave the police precinct.

* * *

After a career in law enforcement, Chief Williams, you know how extraordinarily rare body cavity searches are. You also know that, to be lawful, a body cavity search by police must (1) follow a lawful arrest,¹ (2) be undertaken pursuant to a search warrant,² (3) and be completed by a medical professional in a sterile location.³

This search was none of those things. It followed an unlawful arrest for which the officers had no probable cause. It was pursued without a search warrant. And was completed by a female officer in a dingy, police substation.

The search flew in the face of 50 years of established Supreme Court legal precedent – leaving a 37-year-old mother of two psychologically devastated, bleeding out of her anus, and needing medical attention.

And sadly, shockingly, this was just the beginning.

THE COVER-UP

Phoenix PD's efforts to secret their misconduct began almost immediately. They included, initially, a deliberate effort not to document the encounter, a refusal to investigate Erica's allegations, and a confidential and undisclosed professional standards investigation. When Erica insisted on speaking out, the officers' efforts escalated to a subsequent warrantless arrest of Erica, misrepresentations to our office about Erica's presence in police custody, and the unlawful detention of Erica for hours until your officers coerced an unconstitutional and false confession.

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¹ *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d. 427 (1973).

² See e.g., *U.S. v. Fowlkes*, 804 F.3d 954 (9th Cir. 2015); *Fuller v. M.G. Jewelry*, 950 F.2d 1437 (9th Cir. 1991); *Kennedy v. Los Angeles Police Dep't*, 901 F.2d 702 (9th Cir. 1990); *Giles v. Ackerman*, 746 F.2d 614 (9th Cir. 1984).

³ 804 F.3d at 959.

1. Refusal to investigate the sexual assault.

After the body cavity search revealed nothing, Erica was released to her daughter. In physical pain, bleeding rectally, and traumatized, she eventually asked her daughter to take her to the hospital.

Later that day, Erica presented at Maricopa Medical Center at 26th Street and Roosevelt. She was scared. The officers had used her body like a crime scene and treated her like she was sub-human. She was petrified of what they would do to her if she told the truth about what had happened. But, she did so anyway, relaying to hospital staff “I think I was raped by police officers. They did a body cavity search and now I have bleeding.”

After hearing Erica’s complaints, the emergency room staff called Phoenix PD to approve a SANE examination (commonly known as a “Rape Kit”). The call was standard procedure, necessary to ensure the preservation and appropriate custodial care of evidence collected from someone who is complaining about unlawful, coerced sexual contact.

For hours, Erica waited in the hospital for a forensic nurse to conduct a sexual assault examination. Finally, shortly after midnight, Phoenix Lieutenant J. Hester (E7421) informed hospital staff that Phoenix PD would not investigate Erica’s claims or authorize a SANE exam.

Left with no other choice, the doctors proceeded with the most comprehensive examination they could do. They conducted imaging studies of the insides of Erica’s body, in hopes of assessing damage. And they examined her physically, ruling out rectal or vaginal damage. But their diagnoses left little doubt about how they felt about what they observed:

Final Diagnostic Impression
1. Sexual assault
2. Rectal bleeding

Excerpt of MIHS records, 12/26/2018

2. Erica’s Efforts at Justice

After her release from the hospital, Erica called the City’s Professional Standards Bureau to register a formal complaint. In the following days she followed-up, calling Professional Standards and asking for updates. She called the department’s non-emergency number, seeking answers. And, as you may recall, she even left a message with your office, Chief Williams.

As time went on, and she received no responses, Erica fell into a deep depression. She could barely sleep, and what little sleep she got was interrupted by recurring nightmares of being abused by police. On most mornings it took all the strength she had just to get out of bed – and then, she did so only to care for her 11-month old daughter and granddaughter.

By mid-January, Erica was still waiting for a response from PSB. She had been harboring the shame of this unacknowledged assault for two weeks. Finally, on January 11, 2019, she decided to speak out: She posted a public video on Facebook, tearfully recounting her gruesome experiences with Phoenix PD.

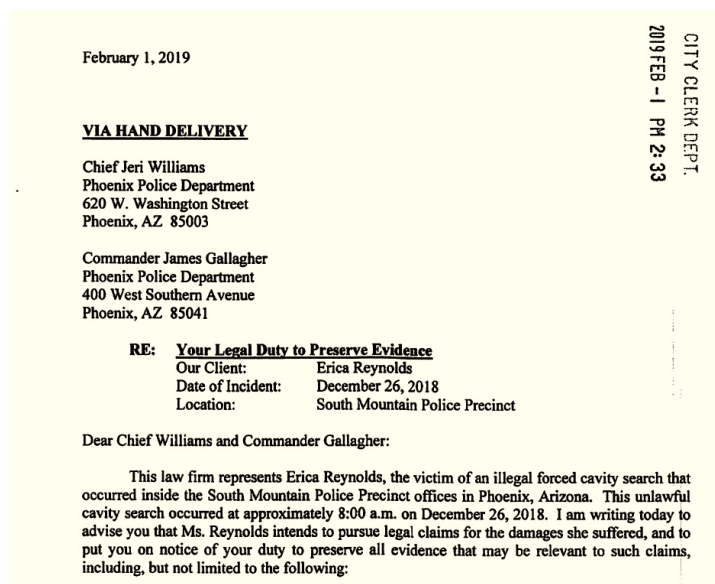
The video went viral, locally, gaining over 6,000 views in a matter of days and being shared widely. Although the media didn't pick this story up, the video got the attention of some local community groups who offered support.

3. Conclusion of the Investigation

Through the first three weeks of January, Phoenix PD was wrapping up their investigation into the alleged "drug ring." On January 23, 2019, the officers sought and obtained sealed grand jury indictments of Mr. Riggins and 22 co-defendants. Erica was not among those indicted.

Over the following weeks the officers began executing grand jury arrest warrants in South Phoenix, as neighborhoods began buzzing about "sweeps" in which people were getting picked up and brought to jail.

On February 1, 2019 our firm hand-delivered a preservation request to your office, Chief Williams. We provided a copy to James Gallagher, the Commander of the South Mountain precinct out of which this investigation was being conducted. In that letter, we specifically identified ourselves as Ms. Reynold's counsel:



Trusting that your Department would honor this legal notice that Erica was represented by counsel, we resumed our investigation into the events of December 26, 2018 – requesting a copy of the report that we assumed was generated following that search.

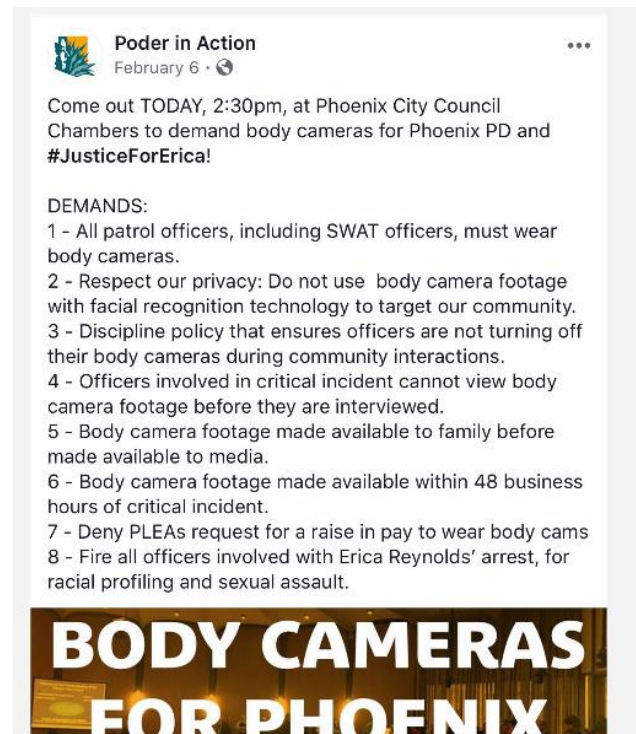
4. Erica prepares to go public

As our office worked to reconstruct the events of December 26, 2018, local community groups working with Erica, prepared her to testify publicly about police violence at the upcoming Phoenix City Council meeting, scheduled for February 6, 2018. In a public event posted on February 2, 2019, Poder in Action, a local 501(c)(3) shared the following on Facebook:

Phoenix City Council is voting to approve 2000 new body camera for the Phoenix Police. We know body cams won't reduce the police violence or hold them accountable.

However, for the survivors of police violence, police shootings or families who's loved ones were taken by police, body cams are an important step to be able to get closure and provide more than the cops story.

Like in the case of Erica, a black south phx woman who was sexually assaulted by Phoenix police. We show up to demand accountability and transparency. #JusticeForErica



Poder In Action's event was widely shared on social media, with the hashtag #JusticeForErica. The City Council meeting, scheduled to take place at 2:30 p.m. on February 6, 2019, was going to be Erica's chance to bring her story to City Council and request that the officers be held accountable.

On February 5, Erica underwent emergency gallbladder surgery that required an in-patient hospital admission. Nonetheless, she was adamant about speaking at Council. And, she was equally adamant about meeting with her attorneys to discuss her case. So, on the morning of February 6, Erica got showered, got dressed, and prepared for her day.

But she never made it to the City Council meeting.

5. Our efforts to find Erica

When Erica didn't arrive at the City Council meeting, we initially assumed that she had decided to stay home and recover from her surgery. Then we got a text message from Erica's daughter, indicating that she had been picked up by police again.

We rushed back to the office and started making phone calls. Our first call was to the Phoenix PD, which connected us with a dispatcher. We provided Erica's name, date of birth, and approximate location of where she was picked up. After being placed on hold for about 5 minutes,

the dispatcher informed us that she had contacted all precincts and no one at Phoenix PD had Erica in their custody.

We then spent the remainder of the afternoon contacting other Valley law enforcement agencies in hopes of locating our client. We called the Maricopa County Sheriff's Office, a host of west valley police departments, even the U.S. Marshall's service. All denied having anyone named Erica Reynolds in custody.

Perplexed, we called Phoenix PD again, and again explained the situation. Erica Reynolds was not in their custody, they continually assured us.

Finally, that evening, we received a call from Erica's daughter. She was at Maricopa Medical Center. We immediately rushed over.

6. Uncovering the Unconstitutional Re-Arrest and Interrogation

When we arrived at Maricopa Medical Center, we found Erica sitting upright in a hospital bed, in visible pain. To our disbelief, and despite Phoenix PD's multiple denials of having Erica in their custody, two Phoenix Police Officers were stationed outside of her room.

We identified ourselves to the officers and asked for privacy. Then we talked to Erica, and learned what had happened that day.

At approximately 11:30 a.m. on February 6, 2019, mere hours before she was supposed to speak at City Council, Erica was pulled over while on her way to grab a quick bite to eat. She was pulled out of her car, handcuffed, and transported to a Phoenix PD substation. Once there, she was subject to the set of tactics familiar to anyone involved in the criminal justice system: She was locked in a small interrogation room while officers recited the sentencing guidelines, threatened her with years in prison; claimed that they would have her infant daughter taken away from her; and treated food, water, and bathroom access as a "gift" that they would bestow upon her as an attempt to curry favor for her cooperation.

Just one day removed from a major surgery, Erica sat in an interrogation room for approximately six hours, deprived of her prescribed pain medication or any medical treatment, and in gross discomfort. Barely a month removed from the trauma of being cavity searched, she was petrified about what the officers were going to do to her this time. And, with the combination of this duress, coercion, and subtle threats of re-traumatization, Phoenix PD eventually got exactly what it was fishing for: a series of incriminating statements, including the motherlode that the officers really wanted (a specifically elicited admission that she had been hiding drugs in her vagina on December 26, 2018).

Once Erica told the officers what they wanted to hear, they brought her back to Maricopa Medical Center for her post-surgery care. After we met with her, the officers transported her to Maricopa County jail, where they booked her into custody on four felony counts relating to the alleged Riggins "drug ring."

7. Our Efforts to Make Sense of Phoenix PD's Conduct

When we attended Erica's Initial Appearance, we obtained two documents. The first was a "Form IV" Probable Cause Statement (still, to this day, the only documentation we have about Phoenix PD's alleged investigation into Erica). The second was paperwork setting Erica's next court date: A hearing known as a "Status Conference."

These disclosures were baffling, and seemingly inconsistent. The Form IV detailed all of the evidence Phoenix PD had against Erica – confirming that, aside from her coerced statements on February 6, the sum of this evidence was from 2018.

Yet, Status Conferences are only set in cases where defendants are not indicted. Specifically, these hearings are opportunities for an unindicted defendant to resolve their case *before* a grand jury formally indicts them.

Our suspicion as to the lack of evidence against Erica was confirmed several days later, when Erica's Status Conference was later "scratched" – signifying that the prosecutor had elected *not* to present Erica's case to a grand jury.

The baffling course of events raised two questions for us:

One: Why would Phoenix Police arrest a woman who had not been indicted two weeks earlier, without collecting any new evidence, at a time when prosecutors were clearly not prepared to indict her?

And Two: Why would seasoned detectives attempt to procure a confession that they knew would be inadmissible – one made by a represented woman who had invoked her right to counsel, and whose attorneys had actually called to attempt to locate her?

Our investigation would yield an obvious answer: The February 6, 2019 arrest was never about attempting to bring a suspected criminal to justice. It was about attempting to collect the evidence for a future smear campaign to justify their previous illegal conduct.

8. Uncovering Evidence of the Cover-Up

Following these events, we began following-up vigorously on our public records requests for Erica's December 26, 2018 police report. After making numerous phone calls and threatening a declaratory action, we were finally informed that the report could not be produced for a simple reason:

No record of the December 26, 2018 cavity search existed.

In fact, it appeared that no record of Erica Reynolds' contact with police existed. Because the Phoenix Police officers – in violation of their own policy – intentionally decided not to write one.

A warrantless body cavity search, in a police substation, by a police officer, following an unlawful arrest. A refusal to investigate the victim's complaints of assault. And now a refusal to even document the interaction?

In over two decades of combined legal experience, neither of us had ever seen police misconduct this egregious. So, as a check on our own impulses, we hired one of the foremost police practices experts in the country, D.P. Van Blaricom, a retired police chief from Bellevue, Washington.

Given the lack of documentation, Chief Van Blaricom had little to review in advising us. Nonetheless, he put together a preliminary report to address his initial opinions. They are biting. And they confirm our own belief that these officers' conduct was so far beyond the pale that it ranks amongst the worst cases of police abuse any of us have ever seen.

THE PLAYBOOK

The obviousness of these multiple violations begs the question:

How will your department possibly defend this gross misconduct?

History, unfortunately, provides us with some clues. Thanks in large part to social media, no shortage of police misconduct cases have made their way into the public consciousness over the last few years. And, in response, police departments around the country, including Phoenix PD, have adopted a predictable course of action in responding to allegations of officer misconduct.

This unofficial "Playbook" involves five steps, collectively aimed at hiding their misconduct and then, if necessary, alchemizing public opinion from criticism of the officers to demonization of the victim:

Step 1: Cover-Up the Misconduct: *First, the officers involved in police misconduct usually attempt to immediately cover it up.* This cover-up can take many forms. It may involve lying about or grossly misrepresenting the incident in a police report, or in Erica's case, it may look like a refusal to draft a police report at all. The officers attempting to cover-up misconduct may even file trumped-up charges against their victims. These false charges further insulate officers and assist with Steps 4 & 5—the Public Justification and Smear Campaign.

Step 2: The Immediate Public Comment. *When the public learns about police misconduct, the police chief makes a public comment.* At this stage, the department's chief executive appears publicly, with a scripted comment. Typically, these statements attempt to strike a

balance between supporting the accused officers (which police politics demand from a chief), affirming the rule of law (by informing the public that an investigation is underway), and generically expressing some remorse – typically limited to those facts that cannot plausibly be questioned, such as actions that are captured on video. Usually, the Chief also asks the public to reserve judgment until all of the facts are known (and then selectively leaks information to help the Department’s own case).

Step 3: The Superficial Internal Investigation. *Next comes the internal investigation that yields no results.* The police division responsible for internal affairs appoints a detective to the investigation. This is, by definition, someone who has agreed to an assignment that no police officer wants – a cop who investigates other cops – almost always in hopes of it serving as stepping stone to a better detail, like homicide. The professional standards investigator isn’t assigned a case to investigate so much as he is provided a near-impossible task to carry-out: Do enough of an investigation to plausibly defend criticism, but not so thorough of an investigation as to submarine his own career by seeming overzealous in putting the needles to his fellow brothers. To add to it, he often has to do all of this under the careful observation of very interested police union representatives (who, throughout the investigation, are attempting to build their own case for the lengthy appeals process that protects police officers from discipline).

Step 4: The Public Justification. *The fourth step in the playbook is the justification game.* After months of being Fort Knox, hoarding information and refusing to respond to public records requests, the Police Department has the unique advantage of being the only party in possession of all of the information: The officers’ accounts of what they say happened; bodycam and surveillance footage; and the officers’ histories and backgrounds. Utilizing this informational advantage, the Police Department publicly discloses select information as support for the officers’ actions – generally this includes some evidence that the victim did *something* to justify the officers’ responses.

Step 5: Smear the Victim. *In the final step, the department attempts to kill the story altogether by shifting the narrative from their officers’ misconduct to the victim’s alleged “crime”—past or present.* They disclose the victim’s prior criminal history, regardless of its relevancy. They find the most offensive photograph they can locate – a prior booking photo, or a particularly menacing selfie posted on social media – that will portray the victim as a predator. The Department may also, if they haven’t already, file criminal charges against the victim in retaliation for bringing this misconduct to light and to insulate the Department from liability.

This “Playbook” is no surprise to anyone who follows allegations of police misconduct. It has been employed time and time again, across the country, whenever a victim of police violence comes forward with their story – even when the misconduct is so egregious that police departments later have to address the misconduct in multi-million dollar settlements (as the families of Freddie Gray, Walter Scott, and Philando Castile all know well). It is playing out right now, in real time, the *Ames* excessive force case. And it has proven its relative effectiveness in terms of managing public sentiment about police misconduct.

Erica Reynolds' case is not unique in this regard. Because as we see above, within hours of their misconduct, the officers had already began preparing for this Playbook:

- First, Phoenix PD officers intentionally chose not to draft a police report documenting their indisputably illegal conduct.
- Hours before she was set to speak before City Council, Phoenix PD pretextually arrested Erica.
- After her arrest, Phoenix PD lied to her attorneys about having Erica in their custody.
- Then, Phoenix PD proceeded to question Erica, for hours, one day after major surgery and over the invocation of her request to speak to an attorney for the purpose of eliciting incriminating statements.
- Then Phoenix PD booked Erica into jail and recommended criminal charges (which have not, to this point, been pursued).

CONCLUSION

Erica Reynolds has not lived a perfect life. She got pregnant young. She never finished college. She's had long periods of her life where she's struggled with money, resulting in numerous civil judgments for failure to pay bills. And like many from her overpoliced South Phoenix community, she has multiple criminal convictions – including one that resulted in a one-year prison sentence for selling narcotic drugs in the past.

But the issue isn't Erica Reynolds' past.

The law is crystal clear on this point: Nothing that Erica did before December 26, 2018 justifies police officers performing a body cavity search after an illegal arrest, without a warrant, and without a medical professional present.

Their conduct was uncontrovertibly unconstitutional, unlawful, and criminal. The only question is whether you will attempt to justify it – and the message you will send by doing so.

Because, while it has proven to be a highly effective tool at controlling a public narrative, the "Playbook" has obviously had another consequence: In shifting the public focus from officer misconduct to the victim's past, police departments have sent the message, both to their public and to their officers, that the victim's constitutional rights are contingent upon being law abiding (or are contingent upon the extent that officers may claim victims are not).

Even under the national spotlight that frequently shines bright on this department, Phoenix PD continues to send this message to its officers – that the constitution ceases to matter when your officers suspect someone of breaking the law (or when officers can claim they suspect someone of breaking the law). As soon as an individual is even arguably suspected of criminal conduct, Phoenix PD believes that it can:

Shoot you in the back, even if it paralyzes you.

Shoot teargas cannisters at you while you're peacefully protesting.

Beat you up, charge you with aggravated assault, and get you prosecuted for a felony.

Point a gun in your toddler's face and threaten to "put a fucking cap in your fucking head" if you don't drop your baby and raise your arms.

With such a culture, is it any surprise that your officers believed they could ignore 50 years of established precedent in searching Erica Reynolds' anal, rectal, and vaginal cavities in a police substation without a search warrant? Or that they ignored Phoenix PD Policy and refused to write a police report? Or that they illegally re-arrested Erica on February 6, 2019, refused to honor her requests to speak to her attorneys, and then lied to her attorneys about having her in their custody?

We submit to you that these actions are the natural consequences of your own inaction: Your established pattern of refusing to hold your officers accountable for their actions and of responding to complaints of officer misconduct by blaming the victims.

The question before you now, Mayor and Chief, is whether you do this again. Whether you will engage in a campaign to re-victimize Erica Reynolds, this time publicly, in an attempt to excuse the inexcusable.

To assist your decision-making, we have hosted an array of materials on a website: www.phxcavitysearch.com, including Erica's January 11, 2018 Facebook video publicly disclosing the misconduct; a Memorandum of Law on the history of body cavity searches; and Chief Van Blaricom's preliminary expert report.

We urge you to review these materials and seriously consider a different course of action – one in which City Officials accept responsibility for the culture that enabled this to happen; to commit to holding officers accountable for their misconduct; and to ensure that *all* victims (even victims of police violence) are treated with respect rather than attacked with derision.

We urge you to respond to this Notice of Claim not with a smear campaign, but with a financial commitment that will ensure that this never happens again. We await your response.

Very truly yours,

Steve Benedetto &
Heather Hamel